

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-208685, B-208960 **DATE:** January 10, 1983

MATTER OF: Jensen-Kelly Corporation

DIGEST:

1. Protest alleging that offerors were not afforded sufficient time to prepare proposals is untimely where that basis of protest was not raised before closing date for receipt of initial proposals.
2. The Government is not required to equalize the competitive advantage gained by firm which submits an unsolicited proposal showing through proprietary design how improvements can be made.

Jensen-Kelly Corporation protests the terms of Requests for Proposals (RFPs) F42600-82-R-4329 (B-208960) and F42600-82-R-4284 (B-208685) issued by Hill Air Force Base for speed brake actuator cylinder end cap assemblies and bearings for the F-4 aircraft. The solicitations identify the end caps and bearings by part number, as P/Ns 1493L002-4 and 1493L004-2, respectively. These numbers specify parts manufactured by Loud Engineering and Manufacturing, Inc. as an approved source using a proprietary design.

According to the protester, it manufactured prior versions of these parts as a subcontractor. It asserts that Loud Engineering obtained an unfair competitive advantage because it alone was solicited to produce an engineering change on which the new parts design is based. In the protester's view, this action gave Loud Engineering a significant headstart in preparing and obtaining approval of its parts, a process which the protester says other firms would have had to have repeated in one or two weeks in order to meet the closing dates established in the RFPs. In the circumstances, the protester contends, the acquisition amounts to an improper sole-source procurement of Loud Engineering parts.

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As explained below, we dismiss the protests in part and deny them in part.

First, we dismiss the protester's contention that it was allowed insufficient time to prepare its proposal.

In both protests, Jensen-Kelly knew the closing date for receipt of initial proposals and, prior to those dates, protested to our Office that Loud Engineering had gained approved source status for the new parts as a result of an allegedly improperly solicited engineering change proposal. In neither case did the protester initially assert that the dates set for closing were unreasonable. That basis of protest was first raised in the protester's response to the Air Force's report to our Office, which pointed out that the RFPs contained language permitting Jensen-Kelly, or others, to concurrently seek approval of alternate products by submitting a proposal in response to the RFPs. Section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. § 21.2(b)(1) (1982)) requires that protests based on alleged defects apparent in a solicitation must be filed before the closing date for receipt of proposals. Since this portion of Jensen-Kelly's protest alleges such a deficiency, it is dismissed as untimely.

Second, we deny Jensen-Kelly's contention that Loud Engineering gained an improper advantage by virtue of its having prepared the engineering proposal on which the new design is based.

According to the Air Force, the new design is the result of an engineering proposal submitted by Loud Engineering. The Air Force states that it accepted this unsolicited proposal because it believes Loud Engineering's new design will overcome recently experienced service life problems with the speed brake actuator cylinder assemblies. The Air Force notes that the Loud Engineering design is proprietary and could not have been used in a competitive procurement.

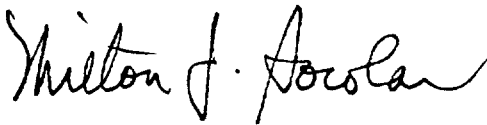
We point out that the Government may restrict competition to firms able to meet its actual needs even though only one firm has the necessary data to do so. See, e.g., Fil-Coil Company, Inc., B-198105, October 21, 1980, 80-2 CPD 304. Indeed, as we have long recognized, some firms may enjoy a competitive

B-208685, B-208960

advantage due to their particular circumstances and such an advantage is unfair only where it results from a preference or unfair action by the Government. Burns and Roe Tennessee, Inc., B-189462, July 21, 1978, 78-2 CPD 57, aff'd., B-189462, August 3, 1979, 79-2 CPD 77. The Government was not required to equalize the competitive advantage which Loud Engineering, recognizing that design improvements were possible, gained by preparing and submitting its proposed new design.

Jensen-Kelly has offered no evidence to rebut the Air Force's statements. As a protester, Jensen-Kelly bears the burden of proving its case and has not met this burden where the only evidence is conflicting statements by the protester and agency. The FMI-Hammer Joint Venture, B-206665, August 20, 1982, 82-2 CPD 160. We conclude, therefore, that there is not sufficient evidence to show that Loud Engineering gained a competitive advantage as a result of any improper action by the Government.

This portion of the protests is denied.


for Comptroller General
of the United States